

In the Matter of the Application)
Regarding the Conversion and)
Acquisition of Control of Premera Blue)
Cross and Its Affiliates.)
) Docket No. G02-45

Taken Before:

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BE IT REMEMBERED that on Monday, March 24, 2003, at
10:07 a.m., at 5000 Capitol Boulevard, Room 120, Tumwater,
Washington, before Mike Kreidler, Insurance Commissioner, the
following proceedings were had, to wit:

<<<<< >>>>>

COMMISSIONER KREIDLER: Let me begin with just more
or less a formal statement that we have here. We're here
today at the Office of the Insurance Commissioner to hold a
status conference in the matter of application of Premera to
convert to a for-profit entity, Case No. G02-45.

Present with me today are Carol Sureau to my right and
to her right Scott Jarvis, both deputy commissioners. And to
my left we have Assistant Attorney General Christine Beusch.

Counsel and party representatives should now identify
themselves for the record. So should we start with
Mr. Odiorne and move over?

MR. ODIORNE: Jim Odiorne for the OIC.

MR. HAMJE: John Hamje for the OIC.

MR. MADDEN: Mike Madden for the Hospital
Associations.

MR. COOPERSMITH: Jeff Coopersmith for the
Washington State Medical Association.

MS. HAMBURGER: Eleanor Hamburger for the Premera

1 Watch Coalition.

2 MR. NICHOLSON: Bill Nicholson with the UW School
3 of Medicine.

4 MR. MITCHELL: Rob Mitchell on behalf of Premera
5 Blue Cross.

6 MR. KELLY: Tom Kelly, Premera Blue Cross.

7 COMMISSIONER KREIDLER: Thank you. This is a
8 status conference being held pursuant to the Fifth Order I
9 have issued in this case. The case -- the first issue to be
10 addressed is the status of data and information collection,
11 by OIC and its experts, from Premera.

12 Premera and OIC filed a status report on the issue prior
13 to the hearing. However, I will give Premera and OIC an
14 opportunity at this conference to address any outstanding
15 issues identified in the report. The intervenors will also
16 be given an opportunity to respond. My goal is to determine
17 if Premera has provided the OIC and its experts with the
18 information needed for the experts to prepare their reports.

19 The second issue relates to confidentiality agreements
20 and a proposed protective order. In previous filings, the
21 parties have indicated that, before discovery can be
22 initiated, such agreements must be in place. I want to know
23 if the agreements are in place, and if not, when they will
24 be. Also, I want to know if the parties believe a protective
25 order is necessary and if they intend to propose one.

1 The third issue has arisen regarding the extent of
2 expert interviews and the conduct by the intervenors pursuant
3 to the Fifth Order. On Friday, March 21st, I was faxed -- I
4 had faxed to the parties a letter from the Office of the
5 Alaska Commissioner raising some questions regarding the
6 interviews. The issue is whether the intervenors are allowed
7 to interview the experts that have been retained to address
8 issues on behalf of Alaska, and if so, under what conditions.

9 I have -- I had assumed that the request from the
10 intervenors was only to the Washington State experts.
11 However, I see from the filing papers of the -- and the Fifth
12 Order that the term "state" has been used in the plural and
13 singular, leading understandably now to some confusion. So I
14 would like to know from the intervenors if they desire to
15 interview the Alaska experts, and if so, why. I will then
16 hear from the positions of OIC and Premera.

17 Let's address each issue separately, beginning with OIC,
18 then Premera, then the intervenors, on the first two issues.
19 On the issue regarding interviews, I will ask the intervenors
20 to go first. I scheduled two hours for the conference, and
21 hopefully we can conclude short of that time frame.

22 So I will begin with OIC.

23 MR. ODIORNE: Commissioner, Mr. Hamje will be
24 presenting to you.

25 MR. HAMJE: Thank you, Commissioner. I understand

1 you want to take each issue separately, and I understand the
2 first issue deals specifically with the status of the
3 production or -- data-production phase of this process.

4 And I think, just speaking in general terms, we have
5 made tremendous progress. If you -- if you'll note, the
6 first exhibit, Exhibit A, which is -- we've made jokes about
7 this before, about needing a magnifying glass to read it. It
8 covers the entire gamut of all -- what is done up to date;
9 although the items that are considered by the OIC staff to be
10 open have not been updated on that particular one. That is
11 only due to the lack of time that we had prior to filing it.

12 And what we had gone ahead and done is submitted the
13 Exhibit B to the status report, which really focuses on those
14 items that, at this stage, we deem or we believe are still
15 open. And there is some disagreement between the OIC and
16 Premera on that point. And I think if you review and see the
17 exhibits following that, Exhibit C through, I believe, J,
18 each of those discusses in the -- by each of the consultants
19 involved what it is -- how the lack of certain aspects,
20 certain parts of those, the information that's been
21 requested, how that's going to impact their various reports
22 and preparation of those reports, some of which are critical.

23 But I also want to go ahead and say that we did receive
24 a privilege log, and that's also discussed in the status
25 report as well. The privilege log contains about 111 items,

1 and we're in the process of reviewing it with the
2 consultants. And it is our intention, within the next week
3 or so, we hope, to complete that review and meet with Premera
4 and start working through that list of items to determine
5 whether or not we can agree that the items are privileged
6 or -- and if they're not, then take further steps, and then
7 also determine whether or not the items are so critical that
8 we might want to discuss the items with Premera further.

9 I think -- just as a general overview, I think that
10 states it fairly well. I think I've covered -- there are
11 items that I believe Premera does indicate that it is still
12 working to submit to us, and there are items --

13 MS. BEUSCH: Excuse me, Mr. Hamje.

14 (Brief pause in proceedings to
15 connect participants
16 telephonically.)

17
18 COMMISSIONER KREIDLER: Good Morning, Kathy.

19 MS. BAXTER: Good morning. How are you?

20 COMMISSIONER KREIDLER: Just fine, thank you.

21 First off we did the interview, and the usual
22 participants are here before us. And I also indicate -- and
23 also on the line, I should point out, are Amy McCullough, who
24 is the lead attorney for the Alaska intervenors, and then
25 Gloria Glover and Nick Attwood of the Alaska Office of the

1 Insurance Commissioner, Division of Insurance Commissioner.

2 And we just heard from the Washington OIC on the first
3 question, which was to kind of address the status of data and
4 information collected by OIC and its experts from Premera.
5 So we're in the process right now of -- we heard from OIC,
6 and now we're going to hear from Premera on this question.

7 Are there any questions from those listening in? If
8 not, we'll proceed, then, to Premera at this point. If you
9 have problems hearing, please let us now.

10 MS. McCULLOUGH: Commissioner Kreidler, before you
11 go on, could you just summarize what OIC's position was,
12 unless it's just a reiteration of what was in their status
13 report?

14 COMMISSIONER KREIDLER: It is a reiteration of what
15 was in their status report, and I don't -- there was no
16 additional or new information.

17 (Interruption by reporter to ask
18 parties participating by phone to
19 state their name when speaking.)
20

21 COMMISSIONER KREIDLER: So we'll move on to Premera
22 and to address that same question.

23 MR. MITCHELL: Thank you, Commissioner Kreidler.
24 As John was saying, the Exhibit B, which the parties had
25 attached to the Joint Status Report, lists all the items that

1 the OIC staff of consultants believe remain open. And it
2 combines a number of different categories of information or
3 status.

4 For the sake of clarity, I think it may be worthwhile to
5 point out where we actually stand on these open items. There
6 are 17 items listed on Exhibit B that are actually complete;
7 only question with respect to those item is the review of the
8 privilege log to which John referred. And so that's the only
9 thing that's waiting on those.

10 There are 13 open items where the ball is entirely in
11 the consultants' court. If, for example, you look at pages 8
12 to 10 of Exhibit B, you will find there a series of issues
13 where the consultants are supposed to respond to Premera.
14 And indeed you will find there a number of cases in which
15 Signal Hill in particular has said that they will respond by
16 a series of dates, most of which are now passed and one of
17 which is in the future. So at this point we're sort of
18 stymied because of the consultants, and that's been a source
19 of some frustration to all of us in the process. I think
20 John will share that.

21 What I would like to focus, then, on are the items that
22 we list on page 4 of the Joint Status Report, if I might.
23 These are the items where we understand the ball is in
24 Premera's court. It's a table (indicating). Yes, exactly
25 so.

1 There are 15 requests or combinations of requests or
2 groups, related requests, which are listed on this table.
3 You will note the first one, for example, was to be e-mailed
4 to the consultants on March 21st. There are three others on
5 that list that were to be done by March 21st. I'm pleased to
6 report that all were produced as promised. Two more of these
7 15 requests involve a meeting with Premera's vice president
8 of underwriting. That meeting is happening today.

9 Seven more of these requests are to be delivered this
10 week; although I should add that the last item, the new
11 tax-related requests that we received on March 4th, we can
12 only begin to respond to those this week. It's probably
13 going to take us more than a week to get them done.

14 So when you sort all of that away, take all of that
15 away, what's left is the Microsoft contract, Exhibit -- or
16 Request No. E 403, which is addressed specifically in the
17 report. And the OIC and Premera are proposing that they be
18 given until the 4th of April to get the confidentiality
19 concerns Microsoft has with respect to that contract
20 resolved. And Request E 510, a request that was received on
21 March 19th, and we have promised to provide that
22 documentation by the 4th of April.

23 Now, since our last status conference on March 3rd,
24 we've received 44 new data requests. So the challenge that
25 Premera has faced in responding to these requests has been

1 that, as more material is provided, more questions are
2 forthcoming. And I guess it should not be altogether
3 surprising, but it does suggest that we are in a process of
4 infinite regress, unless there is some stopping point for the
5 new questions.

6 I think it would be worthwhile, perhaps, for us to
7 determine whether or not we are agreed that these are, in
8 fact, the items that are in Premera's court. Because if they
9 are, then we know what we are supposed to be doing. And we
10 have agreed to and committed to doing it promptly.

11 The other item that I think is worth mentioning here and
12 responding to, something Mr. Hamje said, is that we have
13 produced a privilege log. And we understand that the OIC
14 staff and consultants are reviewing that and then come back
15 to us. It is possible that the parties may be able to
16 resolve any questions that are raised about that. It's also
17 possible that there may be some disagreements that remain.

18 If there are such disagreements, our suggestion would be
19 that the parties take those to the special master for
20 resolution. And we're hoping that that would be a process
21 that would function expeditiously and would allow us all to
22 move beyond this point.

23 I'm happy to respond if the Commissioner has any
24 questions about the six consultant letters that are attached
25 to the Joint Status Report. I would mention that we did not

1 see those until 4:30 in the afternoon on Friday, and we
2 might, I suppose, complain about that.

3 But it actually proves the point that we tried to make
4 at the last status conference, which is that, until a
5 deadline is set for these or any other consultants, we're not
6 going to hear from them in any more concrete form than a list
7 of new questions.

8 This is actually very useful guidance for us to
9 understand what the consultants thought they needed and what
10 they needed from us to get them where they needed to go. I
11 think also illustrative of the fact that, if not grasping at
12 straws, we're close to that point. Because now the
13 consultants are saying that they can't evaluate whether this
14 proposal is in the public interest until they understand all
15 of the interests that were considered by the board of
16 directors when they approved it. Well, whether or not this
17 proposal is to be in the public interest is to be determined
18 on an objective basis, not what was in the minds of the board
19 of directors when they approved it.

20 So we believe, Commissioner Kreidler, that the time has
21 come for the consultants to issue their reports. If they
22 have to add a caveat as to why they can't opine on a
23 particular issue and they don't have sufficient information
24 about a particular issue, they can do so. But that is not --
25 I think should not bar them from completing their reports.

1 There's one more data point, I think, that's worth
2 mentioning here, and it's found in WA 20 and WA 64 in
3 Exhibit B. This is a situation where, some months ago when
4 Premera completed its production of documents, the
5 consultants said, "Well, your production is incomplete
6 because we don't have whole data for the years 1957 to 1960."

7 And in the months since that determination was made,
8 they have been working to reconstruct some of the
9 information. And they have said to us that they want to get
10 it to us on April 11 and have this review and, I guess, bless
11 it at that point. Don't know why it's taken so long.

12 But the more important point is: Why is data from 1957
13 to 1960 holding up this report?

14 COMMISSIONER KREIDLER: That's a good question. Be
15 interested in hearing that myself.

16 What's that?

17 MS. BEUSCH: I don't know if they have questions or
18 a couple of things.

19 COMMISSIONER KREIDLER: One question, as you
20 mentioned -- and I think you make a good point about setting
21 a specific date and then opining on specific problems that
22 may exist. I think that the closer we can get to focusing, I
23 think that would be in everybody's best interest.

24 The other is you talked about the negotiations on
25 privilege. I think that's one that I'll be interested in,

1 not the least of which is -- and I have to admit, I haven't
2 had much time to go over this either, obviously. I got it
3 after I left on Friday afternoon. The -- and it was on the
4 question of compensation under the -- after the conversion,
5 as to executive compensation. I think that's -- that's one
6 I'll be interested in, as to whether we -- that doesn't seem
7 to me to be something we were beyond the issue of -- or
8 treated as a privilege at this point. So we'll be open to
9 having some discussion about that.

10 MR. MITCHELL: If I may speak specifically to that
11 last question, Commissioner Kreidler.

12 COMMISSIONER KREIDLER: Sure.

13 MR. MITCHELL: On Thursday of last week, I think,
14 we supplied to the OIC's consultants detailed information
15 that they had requested earlier on all of the executive
16 compensation levels for the last several years, including
17 calendar year 2002.

18 The question that is open, as I understand it, from the
19 consultants' standpoint, is what are the specific provisions
20 going to be with compensation with respect to stock options
21 and the like in the new entity. My understanding of that
22 circumstance is that the concrete contours of the plan have
23 not yet been established, but there are guidelines which
24 establish the outer bounds of any such compensation, which
25 are a part of the Form A filing; I think that they're

1 Exhibit G to the Form A filing.

2 So Premera's position would be that the worst case
3 scenario from the standpoint of the analysis of this proposal
4 would be what is already in the Form A proposal. The more
5 concrete guidance, which may be forthcoming many months
6 hence, is probably going to be a much better kind of position
7 from the standpoint of assuring the added -- I guess, the
8 compensation is not excessive. But the information in the
9 Form A filing is there already for the consultants to
10 evaluate and to give the Commissioner guidance as to whether
11 it's appropriate.

12 COMMISSIONER KREIDLER: I think it's fair to say
13 that that probably won't meet the standard with a number of
14 people who will raise issues about the appropriateness of
15 this conversion. But we will have more to say about this as
16 we have a clearer understanding of where the line of
17 privilege is drawn.

18 MR. MITCHELL: Yeah. Just to clarify the last
19 point, Commissioner, there is no question of privilege on
20 this issue.

21 COMMISSIONER KREIDLER: There is none?

22 MR. MITCHELL: No.

23 COMMISSIONER KREIDLER: Good. Well, I was
24 concerned that there might be. So I was afraid that there
25 might be application.

1 MR. MITCHELL: No.

2 COMMISSIONER KREIDLER: Okay. Is there another
3 question? Go ahead, please. Christina Beusch.

4 MS. BEUSCH: Mr. Mitchell, I see another area in
5 reviewing the consultants' letters, which I understand you
6 just got Friday, which seem to me emphasize regarding various
7 tax opinions regarding the tax consequences of the
8 conversion. And since you're sorting out the different
9 documents, the relative positions, maybe you could give us a
10 little summary of -- is there a privilege issue here? Is
11 there an issue of not providing opinions regarding the
12 potential tax consequences? 'Cause that seems to be, if not
13 high, even critical in certain aspects to the experts.

14 MR. MITCHELL: Thank you for the question because
15 it's an important one, I think.

16 The first point I would make about the tax analysis is
17 that Premera received 40 -- I think close to 40 requests for
18 additional information from PricewaterhouseCoopers on
19 March 4th. And so we have not responded fully to those yet.
20 And we are hoping to get the first bunch of documents out
21 this week. So there's a question of timing on that.

22 Secondly, there is an issue of privilege associated
23 with, as I understand it, the opinion letter and the
24 correspondence with Premera's counsel about that. I'm not
25 intimately familiar with that issue yet.

1 The third thing I would say is that the issues seem to
2 relate to whether or not Premera will still have a favored
3 tax status following this transaction. I think ultimately
4 that's going to be a question of judgment. And the analysis
5 that may be necessary to do on the part of the consultants or
6 anybody else would be: How does the transaction stack up if
7 that favorable tax status is maintained, and how does it
8 stack up if it is not? Because those are the two options.

9 But that's what I can tell you at this point.

10 MS. BEUSCH: So there's some issues with respect --
11 potential issues with respect to privilege, and there's other
12 issues in which you're saying you're just -- you got requests
13 relating to the tax issues early in March that you're
14 responding to.

15 MR. MITCHELL: Exactly so.

16 MS. BEUSCH: And has there been some entity,
17 whether it's Ernst and Young, who has provided an opinion
18 regarding the tax treatment of the conversion? That seems to
19 be the issue that's been talked about in these documents.

20 MR. MITCHELL: My understanding is that E&Y is the
21 entity that's providing the opinion and doing the analysis.
22 And PwC is looking over E&Y's shoulder, as it were. No
23 opinion has been issued at this point.

24 MS. BEUSCH: So no opinion's been issued?

25 MR. MITCHELL: Right.

1 MS. BEUSCH: But is it expected that -- was Ernst
2 and Young retained to ultimately issue an opinion regarding
3 the tax treatment of the conversion?

4 MR. DOMEIKA: That's correct.

5 MR. MITCHELL: That's my understanding.

6 MS. BEUSCH: Is that on a certain time frame of
7 when that would be finalized, or...?

8 MR. DOMEIKA: Typically those are finalized at the
9 time of the transaction itself. So when you look at the
10 converting event, the converting transaction, that is when
11 the final opinions would be issued. Anything before then
12 would be in draft form.

13 MS. BEUSCH: And is it -- and maybe it's not --

14 COMMISSIONER KREIDLER: Just for the record, that
15 was John Domeika.

16 MR. DOMEIKA: Sorry.

17 MS. BEUSCH: And is there an issue -- and maybe
18 it's still being worked out, so I don't want to create an
19 issue if there isn't one -- as to whether any draft leading
20 up to that final, whether that would be disclosable, being
21 privileged?

22 MR. DOMEIKA: Just to clarify, there's actually two
23 types of opinions on two issues that Rob has mentioned here.
24 This is an issue about the 833, B is what it's known as.
25 There's a short-form opinion that Ernst and Young would issue

1 just basically summarizing its findings.

2 The second type of opinion is a long-form opinion, which
3 is a fairly analytical opinion, very long and lengthy, talks
4 about the merits of their opinion, where there might be
5 pitfalls, where there might being strengths, et cetera.

6 It is that second opinion that has not been drafted and
7 that we are asserting the privilege with respect to.

8 MS. BEUSCH: But the short-form opinion has been
9 drafted?

10 MR. DOMEIKA: There is a draft of it that has been
11 provided to the consultants.

12 MS. BEUSCH: And that's -- the short form's been
13 provided?

14 MR. DOMEIKA: Exactly.

15 MS. BEUSCH: I guess --

16 COMMISSIONER KREIDLER: That does it?

17 MS. BEUSCH: I didn't know whether -- if there were
18 two, a letter from Blackstone and a letter from the antitrust
19 and whether -- experts who were doing antitrust, whether you
20 had any particular response on --

21 MR. MITCHELL: The only point I would make with
22 respect to the letter from Assist Attorney John Ellis is that
23 it mentions meetings that have to be scheduled or have been
24 scheduled or haven't yet occurred. We agreed that those need
25 to go forward.

1 MS. BEUSCH: So those meetings would be going
2 forward to address the issues raised by --

3 MR. MITCHELL: Yes.

4 MS. BEUSCH: And how about with respect to the
5 letter from the Blackstone Group?

6 MR. MITCHELL: Give me a moment, please.

7 MS. BEUSCH: If you have a -- you know, I -- they
8 do refer back to specific requests. So if your answer is,
9 "We just go back to the exhibits..."

10 MR. MITCHELL: Well, we can go through with the
11 items. They're -- the first one, for example, confirmation
12 from Premera that Blackstone has received all correspondence
13 between the company of Goldman Sachs actually is a
14 privilege-related question because, certainly, correspondence
15 between Goldman Sachs and Premera is beneath assertion of
16 privilege. And Blackstone says that their judgment on
17 whether an adequate business case was made for the conversion
18 would be inconclusive or erroneous without the data.

19 But I guess we're a little bit confused about whether --
20 what another consultant has said about this particular
21 proposed series of transactions is going to be germane to
22 Blackstone, who's supposed to be looking at the objective
23 data and forming its own opinion based upon the Form A filing
24 documents.

25 So with respect to WA 6, again, that's a privilege-log

1 issue, and we're not trying to make the business case for the
2 conversion through privileged documents. The Form A filing
3 makes the case, so that's what we think should be evaluated.

4 The last two items on the Blackstone list, WA 74 and
5 E 482, and then 505 and 506, I would like to speak to
6 separately because they're different. That WA 74 was
7 completed on Friday, and it's in their court. The last two
8 items are ones that are listed on our table, page 4, to be
9 provided by March 28th, this Friday.

10 MS. BEUSCH: Okay. That's fine. Thank you.

11 MS. SUREAU: I don't have anything, Commissioner.

12 COMMISSIONER KREIDLER: Let's move to the
13 intervenors, then, to respond to the information that's been
14 filed.

15 MS. HAMBURGER: Your Honor, we have nothing to add,
16 except that we support the Insurance Commissioner's staff
17 efforts to make sure that all the information they need for
18 their experts is made available to them before they move
19 forward and that, you know, the issues highlighted by the
20 OIC's experts in the appendixes really highlight the need to
21 have disclosure related to the consultation. And those
22 issues, as we know, have been critical issues in review of
23 conversion transactions in other states. I think that's...

24 COMMISSIONER KREIDLER: Okay. Before we move on to
25 that last question, it was one that Premera has raised now

1 effectively for the second time; and that is the issue of
2 setting some dates, to what extent, from the standpoint of
3 when information is to be filed or, as was suggested,
4 offering explanation as to why there would be problems with
5 setting a specific date or limitations thereof.

6 To what extent would the intervenors have concerns on
7 that particular point?

8 MS. HAMBURGER: Our concerns are just that, before
9 the -- before dates are set, that the OIC experts have access
10 to all the information that they feel they need in order to
11 set out the time frame and make sure that they're able to
12 give as definitive determinations as they can when they issue
13 their report.

14 COMMISSIONER KREIDLER: And OIC? How would they
15 respond to setting dates?

16 MR. HAMJE: Much the same way, except that I would
17 want to emphasize I think that we've made tremendous progress
18 in these last -- even just since the last status conference.
19 We have engaged in telephone conference calls with the
20 consultants, representatives of all the consultants, twice a
21 week, except for the one week where we also met face to face,
22 with some telephonic participation, in Seattle on March, I
23 think it was, 14th.

24 We are getting to a point where I think that we're going
25 to be in a position, hopefully soon, to be able to make some

1 definitive statement and representation to you.

2 But we've got to keep in mind a couple of things in this
3 process. Although this is a unique process as far as
4 Washington is concerned, it is really -- and as I've
5 emphasized from the very beginning, it is still basically a
6 Form A filing, about which we have tremendous experience and
7 procedures that have been long-established. And those
8 procedures have always been kind of a give-and-take kind of
9 relationship between an applicant and the OIC; we ask
10 questions and the applicant provides answers or responses,
11 and we work together to a point where the particular
12 application can be determined.

13 And if we -- one of the concerns I have in this process
14 is that, if we go ahead and stop any further questioning,
15 that is going to cripple us, even to the point where, if
16 there is a completion of the data-production phase and the
17 process for drafting reports has begun, there still are going
18 to be questions that are going to come up. And we're still
19 going to have to have the kind of give-and-take flexibility
20 that we have usually enjoyed or normally enjoyed in this
21 process. And so we're going to want to continue that.

22 But what we're doing with the privilege log, we're going
23 to sit down and go through that and work through that and
24 hopefully come to a resolution. Clearly, privilege is
25 something that everyone must recognize, and if an item is

1 truly privileged, then we must leave it alone.

2 But there are issues. And I do want to make it clear
3 that one of the issues that, Commissioner, you're going to be
4 considering is one that you mentioned in your Fourth Order,
5 which is whether the future business plans of Premera are
6 unfair or unreasonable to subscribers and not in the public
7 interest. And when you're dealing with that issue, one of
8 important questions that you have to approach is whether or
9 not there is an adequate business case that's been made for
10 this particular transaction, whether there are any conflicts
11 of interest, and if there are conflicts of interest, that
12 they've all been properly disclosed to the board.

13 And in some respects, we have to be very careful as we
14 proceed through this process, to where we see those kinds of
15 items, we've got to flag them. And that, I think, is to a
16 great extent some the concerns that these experts who we have
17 retained are seeing.

18 For instance, in other conversions that they've worked
19 on, they may have found evidence, you know, and that's why
20 the questions that they're asking are designed to elicit
21 evidence such as this. And when it comes back that, "Well,
22 no, we have not put together a compensation plan for
23 post-conversion," that raises some warning flags and some
24 questions about that. Because that's a very important issue
25 in terms of conflict of interest.

1 COMMISSIONER KREIDLER: Couldn't you, though --
2 within the guidelines of the issues that you're raising,
3 couldn't you still specify where effectively it is complete,
4 and then you're moving on and identifying defined areas?

5 MR. HAMJE: I believe -- Commissioner, I think that
6 ultimately, exactly that's what's going to happen. If there
7 are areas where Premera does not have records, there are
8 areas where the records they do have are privileged, then
9 each of the reports are going to have to address those
10 omissions. And again, whether it's justifiable or not,
11 that's not what I'm addressing at this point in time. It's
12 just that that's what the report's going to address. And it
13 may very well be a problem; it may not be a problem.

14 But it is a concern, and that's why I believe you're
15 seeing this -- you see in these letters and these tables that
16 the consultants have submitted what their concerns are and
17 why they believe there are certain items critical to their
18 draft reports, and others are very high in importance as
19 well.

20 COMMISSIONER KREIDLER: Mr. Mitchell?

21 MR. MITCHELL: Commissioner Kreidler, I want to
22 agree vehemently with Mr. Hamje on one point, which is that
23 there is value in the back-and-forth that we've had in the
24 last two weeks. And as he said, if we were to stop any
25 further questioning at this point, that would be a bad thing.

1 We are not proposing to stop answering questions that
2 come to us. We fully anticipate that, in the process of
3 drafting the reports, the consultants may have further
4 questions. If they didn't, we'd be kind of shocked.

5 COMMISSIONER KREIDLER: Sure.

6 MR. MITCHELL: Our point merely is that the process
7 of drafting should go forward, and we would be happy to
8 commit. And indeed, I think Mr. Hamje and I talked about
9 this. We would be happy to commit to continuing to respond
10 expeditiously to the questions that we received from the
11 consultants so that they can get on with their reports. We
12 just don't want to have that process -- you know, the start
13 of that process delayed any further.

14 COMMISSIONER KREIDLER: Understood.

15 MR. HAMJE: Commissioner, if I could add one more
16 thing.

17 COMMISSIONER KREIDLER: Sure.

18 MR. HAMJE: I do also -- and this is something that
19 I brought up at the last meeting, and I want to make it very
20 clear. This is -- because of the way the legislature has
21 drafted the legislation that we're all here to implement, it
22 puts the burden on the Office of Insurance Commissioner if a
23 decision came down to disapprove.

24 MS. McCULLOUGH: Excuse me. This is Amy McCullough
25 in Alaska.

1 COMMISSIONER KREIDLER: Yes, Amy.

2 MS. McCULLOUGH: And I'm sorry. For whatever
3 reason the phone is cutting out occasionally, and I just
4 missed that statement Mr. Hamje made.

5 COMMISSIONER KREIDLER: We will ask Mr. Hamje to
6 repeat that.

7 MS. McCULLOUGH: Thank you.

8 MR. HAMJE: I'll be happy to repeat it.

9 Because the legislature has charged us with a certain
10 statutory framework to work with in making determinations
11 about transactions such as are before us today, that
12 particular process provides -- and, you know, as is usually
13 the case in the legislature, there are a balancing of
14 interests. And we have -- must always keep in mind that, if
15 the determination of this office were that the particular --
16 that a particular transaction be disapproved, the statute
17 provides that there must be evidence of that; that is, the
18 burden is on the Office of Insurance Commissioner to go ahead
19 and list that evidence that supports that position. The
20 burden is not on the applicant to come forward with that
21 particular evidence.

22 But the difference is -- and what -- as we've spoken
23 before, where the Commissioner's -- where the balancing was
24 done appropriately, I think, by the legislature, is that the
25 Commissioner makes the determination as to when the record is

1 complete; that is, when all the -- that he is satisfied that
2 all of the information that's relevant and important is in
3 the record.

4 And keep in mind that this information is under the
5 control of Premera and not under our control. And so that is
6 something we always have to keep in mind in terms of looking
7 at the context of this proceeding.

8 COMMISSIONER KREIDLER: Okay. Thank you. Let's
9 move on, then, to the second question which was raised,
10 unless there are objections. And that question was on the
11 question of the confidentiality agreement and a proposed
12 protective order.

13 Let's -- why don't we start over here with Premera at
14 this time.

15 MR. KELLY: Very good. Thank you. I think this is
16 a pretty short report. We have been working -- the
17 intervenors, the OIC staff, and Premera -- on developing a
18 protective order. We think that we're going to be able to do
19 this through a protective order rather than having to have a
20 separate confidentiality agreements.

21 We met twice last week and exchanged drafts. And the
22 current draft, at least that Premera is proposing, is sort of
23 a two-part draft: one dealing with the involvement of the OIC
24 staff and its consultants in regard to a protective order
25 because they have certain limitations that are different than

1 intervenors; and the second half being with regard to the
2 issues that relate to the intervenors' access and use of
3 documents produced in discovery.

4 The first one is relatively shorter. And I believe that
5 Mr. Hamje will agree with me; we had some discussions on
6 this, and I think that we are really down to our final
7 wording and vision. And I would expect that, at least to our
8 satisfaction, that language would be -- on part one would be
9 able to be reached by -- certainly by, I would think, by the
10 end of the week, and that it's very likely that there will be
11 agreement.

12 On the second half, with the intervenors, there has been
13 tremendous progress made. I think we have general outlines
14 of approaches in many areas. There's certainly additional
15 wordsmithing to be done. It's more complicated because there
16 are questions like: Who can have access? What are we -- how
17 are we going to define attorneys'-eyes-only documents, and
18 who will have access to them and so forth?

19 It's not unusually complicated. It looks a lot like
20 protective orders that are entered in many commercial
21 disputes. And indeed it is in large part modeled on the
22 efforts that Mr. Madden and Mr. Mitchell have been doing in
23 the proceeding that's going on up in King County Courthouse.

24 But -- and I would think that another meeting with --
25 this week, later this week with the intervenors and the OIC

1 staff would be productive on reducing those disputes to a
2 minimum. However, my own view is that it -- it's not because
3 of lack of cooperation, but it's because of a lack of --
4 because two different perspectives on what should be done.
5 There may well be one or more issues that we are simply
6 unable to agree on.

7 And so Premera would propose the following, which I
8 think is pretty straightforward: I think we ought to meet
9 again, and I'm sure everyone will agree to do that later this
10 week.

11 I think that the Commissioner should suggest or should
12 direct the following: To have this all done by March 28th,
13 by Friday. If we are unable to reach an agreement, then
14 Premera requests that you direct this issue of the special --
15 of the protective order go to the special master, being
16 perhaps the first act of -- or activity that the special
17 master would engage in, and that the special master have
18 another meeting with us next week so that we can present to
19 the special master our positions. I think they can be
20 presented pretty straightforward. This is not going to be a
21 surprise to the special master about the issues. And then
22 ask that the special master issue a protective order by, say,
23 Monday, April 7.

24 Now, obviously that protective order, if any of the
25 parties disagree with it, would be subject to appeal back to

1 the Commissioner; but I think it would be served -- serve a
2 number of purposes, including getting this done, and also
3 being a good introduction for the special master as to many
4 of the issues that the special master might have to face.
5 And also, since the special master's likely to have to
6 enforce it, it's probably appropriate that the special maser
7 gets involved right away so that this is a workable document.

8 So I think that summarizes our report on the status.

9 COMMISSIONER KREIDLER: Thank you, Mr. Kelly. And
10 just go to OIC, and then we're going to come back and ask the
11 intervenors for their position. Mr. Hamje?

12 MR. HAMJE: Commissioner, generally, certainly
13 dispute nothing that Mr. Kelly has said today.

14 There are -- over the weekend input from other staff on
15 this the protective order draft that has been submitted
16 reached me. And an issue has arisen whether I've been making
17 an incorrect assumption in this process. I haven't had a
18 chance yet to talk to Mr. Kelly about it. I've started to
19 talk -- to get some information myself, and I -- and so I --
20 I do believe there's going to be a need for additional
21 discussions, without going into the details of it at this
22 point.

23 But I do believe that, regardless of whether -- if I've
24 made an incorrect assumption or not, that what Mr. Kelly has
25 indicated will come to pass. In fact, if it turns out that

1 my assumption was in error, then the agreement should be
2 worked out quicker than what would be anticipated.

3 But I do generally agree with Mr. Kelly about the
4 process, that it should be submitted to the special master if
5 we cannot do so, and the 28th is not a problem for us.
6 Really, I think the intervenor groups are the ones that are
7 more concerned about the process.

8 COMMISSIONER KREIDLER: Okay. Intervenors? Ele?

9 MS. HAMBURGER: I think, you know, Mr. Kelly
10 generally outlined the process correctly about what we've
11 been going through. And I think there is general agreement,
12 and there are clearly identified few issues. And we have no
13 objection to going to the special master as long as the
14 issues about costs, which I think are still kind of
15 unresolved, are resolved and that there's no cost to our use
16 of the special master. We think -- and so the concept is
17 good.

18 I do think that having it resolved by Friday will be a
19 little bit short. When we had last met, we had talked about
20 somewhere by early next week so that we're -- you know, we
21 planned to meet sometime this week and do our best to gather
22 everybody's comments up and try to clearly identify where we
23 are on key issues and where there's wordsmithing to be done
24 and where there's just generally -- on the few issues where
25 there isn't agreement.

1 COMMISSIONER KREIDLER: Very good. I'm trying to
2 remember where we are on the cost issue.

3 MS. BEUSCH: That was still under consideration
4 with the assignment of -- the appointment of the special
5 master in the process. So we can include that in that one.

6 MR. KELLY: If I may, to the extent that that would
7 facilitate getting it started, we are in one sense proposing
8 the use of special master for this purpose. We certainly
9 have no objection to his or her costs in regard to this
10 process.

11 COMMISSIONER KREIDLER: Won't be the stumbling
12 block on cost.

13 MS. HAMBURGER: Just one thing I want to add, just
14 so it's in the record is that, although there has been
15 negotiation, Premera's model is to look to the negotiation
16 between Premera and WISHA in their civil litigation. We have
17 proposed a separate and distinct order because the issues
18 related to review under the Holding Company Act are different
19 and involve different issues and discovery of different
20 information.

21 And so I just wanted to make sure it's clear that there
22 hasn't been an agreement on should it be the same as in this
23 civil case or should it be different.

24 COMMISSIONER KREIDLER: That's a good point, and
25 that's one we have not discussed. We will as soon as we can

1 find that line between the two.

2 It sounds to me that, Mr. Hamje's issue that apparently
3 you're aware of relative to that being clarified, that we
4 could proceed, then, with the -- with the -- complete by the
5 28th, this Friday; and that if there were substantive
6 concerns still at play, I think it would not be unreasonable
7 to postpone that date if indeed that turned out to be a
8 stumbling block. But it sounds like that's one that can be
9 worked out, just giving parties here a chance to clarify
10 those particular points.

11 So let's shoot for the 28th, then. Barring that, if
12 there is exception to that, we will postpone the 28th. But
13 presuming that that can be worked out, we'll proceed to the
14 28th. And that failing, move on to working with the special
15 master following that anticipation that we could have it
16 complete by the 7th of April.

17 Any concerns? We'll go ahead and do it that way.

18 Then we also have the third issue before us, and that
19 was the one that effectively was raised regarding the extent
20 that expert interviews be conducted by the intervenors
21 pursuant to the Fifth Order. And I believe that's all
22 tied -- I'm going to ask Christina.

23 MR. COOPERSMITH: Commissioner, can we seek a
24 clarification of your ruling in the previous issue?

25 COMMISSIONER KREIDLER: Oh, okay.

1 MS. HAMBURGER: If there is a substantive concern
2 that we're not able to resolve by the 28th and we need
3 additional time, how should we proceed?

4 MS. SUREAU: I'll volunteer.

5 COMMISSIONER KREIDLER: Ms. Sureau will act as
6 the --

7 MS. SUREAU: Just e-mail or fax machine. Just
8 e-mail me or fax me, let me know.

9 COMMISSIONER KREIDLER: Okay.

10 MS. HAMBURGER: Thank you.

11 COMMISSIONER KREIDLER: It is a sincere desire to
12 see if we can proceed on this particular point and get it
13 behind us by all parties, I can tell. That's good. Okay?

14 And then regarding the third issue...

15 MS. BEUSCH: Actually, as the Commissioner said in
16 his opening remarks, we'd received a letter from the Division
17 of the Insurance Commissioner for Alaska, which we had
18 forwarded to all the parties, raising an issue regarding the
19 extent of interviews by the intervenors. The Fifth Order set
20 out allowing those interviews and then conditions for those.

21 But in reviewing the Fifth Order and in reviewing the
22 parties' filings, it seems at various times "states" was
23 plural, and "states" was singular. And the Commissioner,
24 discussing with him, had assumed it's the Washington
25 proceeding we're talking about, the Washington experts. But

1 there is plural used in the order. And -- but then the
2 intervenors' requests seem for singular, while the OIC's
3 position in their papers and their filing regarding it are
4 plural.

5 So it seems that they'll -- obviously, if the Alaska
6 experts are to be interviewed, that the Commissioner's Office
7 in Alaska has an interest in that, and properly so, and has
8 set forth their understanding of how, under what conditions,
9 they would allow such interviews.

10 So the first question really got back to: What did the
11 intervenors really ask? And now that maybe they got more
12 than they asked for, is that what they want and why? And to
13 give the parties, Premera and OIC, an opportunity to respond
14 to that.

15 So we want to be clear: What were the intervenors -- or
16 are they asking for? What are the other parties' positions
17 on it? And then we can talk about what conditions should
18 apply or be changed in light of that.

19 COMMISSIONER KREIDLER: Let's ask Ms. Hamburger to
20 respond to that first.

21 MS. HAMBURGER: Thank you. It was our intent to
22 interview experts who were doing work in both Washington and
23 Alaska. And if our use of -- lack of the plural in our
24 papers was confusing, then I apologize for that.

25 Our health impact study and the experts that we have

1 commissioned, their plan to look at the impact in both
2 Washington and Alaska. And for that reason, the Alaska
3 intervenors have been working jointly with us on planning for
4 that study and have been working with gathering health
5 information and health data in Alaska in preparation for
6 that.

7 We got a copy of the letter from the Division of
8 Insurance, and we have no problem with the conditions that
9 the Alaska Department of Insurance would like as part of this
10 process. We think actually it would be very helpful. And we
11 think that the information that we are working on developing
12 will be helpful both in Washington State and in Alaska. And
13 our goal is to do it efficiently in one report, with one set
14 of experts that can be used to assist both insurance
15 commissioners in both states.

16 COMMISSIONER KREIDLER: Okay. If you could clarify
17 that just a little bit just relative to single report. So
18 there would be perhaps -- it would -- let's say response from
19 a particular category of expert. In one case it would be
20 where you would have the same expert but responding to Alaska
21 and Washington. So it would be all as a part of that
22 effective response?

23 MS. HAMBURGER: I guess it's a little early, and
24 that was -- has always been kind of the way I understood it,
25 and we may change as we do this. It may be unwieldy to have.

1 But what we had been envisioning is it would be a health
2 impact about the conversion of Alaska and Washington
3 together.

4 COMMISSIONER KREIDLER: Together. Ms. Sureau?

5 MS. SUREAU: I believe that there have been
6 consultants hired specifically to look at Alaska-only issues
7 as well as consultants retained to look at issues that cross
8 the state boundaries. Is your interest in interviewing the
9 Alaska-only consultants as well?

10 MS. HAMBURGER: I think it would be helpful to make
11 sure that we're not duplicating the work that the Alaska-only
12 consultants are doing.

13 MS. SUREAU: Thanks.

14 COMMISSIONER KREIDLER: Let's move on to OIC, and
15 then give Premera a chance to respond to the questions that
16 have been raised.

17 MR. HAMJE: The OIC staff has no objection to what
18 Alaska has suggested in its March 19th letter to you,
19 Commissioner, regarding these informal interviews of experts.
20 We really -- we had intended that that be the case initially.
21 That was our understanding, and that they also should be
22 questioned to make absolutely sure there's no duplication of
23 effort.

24 COMMISSIONER KREIDLER: Okay. Premera?

25 MR. KELLY: Yes. Well, a couple of points. The

1 first is, just referring to the letter, we certainly agree
2 with Ms. Glover's statement that someone from ADI and/or its
3 legal counsel should be present at the interviews and should
4 be present to instruct an Alaska consultant not to answer a
5 question if it goes beyond the area of inquiry allowed by the
6 order.

7 Secondly, we think it is important that the eight-hour
8 cap for all interviews remain in place and that that will
9 help impose discipline here.

10 Thirdly, we -- it's a question that Ms. Sureau raised
11 about consultants for Alaska matters only versus
12 cross-state-border matters. And I think we need to keep in
13 mind the point raised in this letter from Ms. Grover about
14 these are two separate entities, two separate jurisdictions.

15 The intervenors have been appointed by you to help you
16 in this jurisdiction. They may or may not be appointed or
17 others may be appointed to help the Alaska commissioner in
18 her jurisdiction. And I think it would be premature to say,
19 "Well, we're planning on doing one report, and so it would
20 sure be convenient ahead of time to talk to the Alaska
21 consultants."

22 So not wanting to make too much of it, I think it would
23 be appropriate to limit any such interviews at this time to
24 topics that these intervenors are authorized to discuss and
25 that pertain to across-state issues.

1 COMMISSIONER KREIDLER: You're effectively asking
2 that it be defined intervenors be the intervenors of record,
3 so to speak, for both states?

4 MR. KELLY: No. I'm saying just the opposite. I
5 wouldn't presume to interfere at this stage with what the
6 Alaska commissioner wants to do.

7 COMMISSIONER KREIDLER: I agree. But is that what
8 you desire or not?

9 MR. KELLY: Depends on who comes forward and says
10 they would be an intervenor. I think that would be premature
11 to figure that out. And then the logical break at this point
12 is, well, here are these interviews for eight hours. The
13 Alaska consultants who are dealing with cross-state issues,
14 those are, I guess, the logical people to be questioned
15 'cause this is suppose be to be, remember, just a preliminary
16 observation approach.

17 COMMISSIONER KREIDLER: Okay. Let me ask Gloria
18 Glover to offer any comment in light of the discussion that's
19 just taken place.

20 MS. GLOVER: I'm going to ask Nick Atwood to make
21 comment.

22 COMMISSIONER KREIDLER: Sure. Nick?

23 MR. ATWOOD: Good morning, Commissioner.

24 COMMISSIONER KREIDLER: Good morning.

25 MR. ATWOOD: I think -- yeah. I think that we

1 might have a slight disagreement about whether interviews of
2 all the Alaska consultants should be done now. I guess we
3 don't see any particular downside to doing that when, as I
4 understood, the point of the interviews was to -- based on
5 your last order, was to determine the scope of the work being
6 done so that intervenors in the Washington proceeding don't
7 duplicate the work. And if that's the case, then it should
8 be relatively short interviews to determine whether there's
9 crossover by Alaska's experts or not.

10 I don't know if that was very clear.

11 COMMISSIONER KREIDLER: Let me ask if anybody here,
12 whether the intervenors or OIC or Premera, have any questions
13 that they'd want to ask in relation to that.

14 It appears that there are no questions, so you are
15 adequately clear.

16 MR. ATWOOD: Thank you.

17 COMMISSIONER KREIDLER: Are there any other
18 questions relative to this issue?

19 If there are none, I would presume that we have
20 completed our work here today. And I'll look forward to
21 seeing if the desired outcome here for the protective order
22 can be worked out. And we will be following up before too
23 much longer our -- on the questions relative to the
24 interviews of the experts. And I believe that's correct.

25 Is there anything else?

1 MS. BEUSCH: Just for timing at this point, are
2 there scheduled meetings? You said there's the privilege log
3 that the OIC and experts are going through. Do you have any
4 future scheduled meetings with Mr. Mitchell or others to move
5 that process along, just so we know in our...?

6 MR. HAMJE: Twice a week we have telephone
7 conference calls, Tuesday and Thursdays, with the
8 consultants, which I understand we've scheduled through
9 April. The hope is we won't have to continue them that long,
10 but they are scheduled. Twice a week we're talking about
11 that. And I assume that, with respect to -- and that's
12 involves the data-production issues.

13 We're going to have to complete a review of the
14 privilege log. We don't have -- not yet scheduled a date for
15 a meeting with respect to that, but it's always possible that
16 after it's reviewed there may not be a need for a meeting. I
17 don't know at this stage. But we already sent out last week
18 copies of it to all of the consultants, and we're awaiting
19 comment.

20 MS. BEUSCH: Do you have -- if you don't, I don't
21 want to unfairly press it. But do you have an estimate of
22 about what time your OIC staff experts will have reviewed the
23 privilege log, if they've been able to indicate to you?

24 MR. HAMJE: I know what I would like, but I -- but
25 as you gave me an out and said if I don't have an estimate I

1 don't have it give you, I really don't have an estimate.

2 MS. SUREAU: Can I ask a question?

3 COMMISSIONER KREIDLER: Sure. Ms. Sureau.

4 MS. SUREAU: Mr. Hamje, could you please give us
5 your best estimate? I think we need to get more of a feel to
6 where this process is at. So if you can give us more of an
7 estimate about when we can expect the review of the privilege
8 log to be complete...

9 MR. HAMJE: May I consult --

10 MS. SUREAU: Certainly.

11 MR. HAMJE: -- with OIC staff?

12 MS. SUREAU: If he can still talk.

13 MR. HAMJE: Mr. Odiorne and I feel like that two
14 weeks on the outside should do it.

15 MS. SUREAU: So that would be the week after the
16 28th.

17 MR. HAMJE: Yes. I would take it from two weeks
18 from last Friday 'cause that's when we distributed it.

19 COMMISSIONER KREIDLER: Premera? Anything?

20 MR. MITCHELL: We're certainly happy to meet with
21 the staff and the consultants whenever they are able to do
22 so.

23 I guess I would remark that it's remarkable how
24 effective these scheduled status conferences have been in
25 actually securing movement along a mutually desired path.

1 And if I might venture a suggestion, it would be to perhaps
2 schedule another one to make sure that the parties have
3 indeed accomplished what they more or less undertook to
4 accomplish today.

5 COMMISSIONER KREIDLER: I will take that under
6 advisement and inform you henceforth.

7 Further discussion? Yes, please.

8 MR. KELLY: One question. Just was wondering if
9 there's any indication when we might expect to hear when the
10 special master would be appointed.

11 COMMISSIONER KREIDLER: I've been advised to say
12 the word "expeditiously." We are working on it.

13 MS. SUREAU: Shortly.

14 COMMISSIONER KREIDLER: Very, very soon. We're
15 very close on this. In fact, if Ms. Sureau had been
16 healthier last week, we might have --

17 MS. SUREAU: Sorry. My fault entirely.

18 COMMISSIONER KREIDLER: That's not fair.

19 But to give you some idea of how quickly, we're working
20 on this issue.

21 If there's no further business to come before this
22 status meeting on the application of Premera to convert, we
23 will adjourn. Meeting adjourned.

24 (Proceedings concluded at 11:13 a.m.)
25

C E R T I F I C A T E

I, SUE E. GARCIA, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing at Tacoma, do hereby certify:

That the foregoing proceedings were taken before me on the 24th of March, 2003, and thereafter transcribed by me by means of computer-aided transcription, that the transcript is a full, true, and complete transcript of said proceedings;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

IN WITNESS HEREOF, I have hereunto set my hand and affixed my official seal this March 27, 2003.

SUE E. GARCIA, CCR, RPR
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